MOTION FILED

APR 18 1975

No. 74-1270

# In the Supreme Court of the United States

OCTOBER TERM, 1974

RUSSELL TRAIN, ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
PETITIONERS,

*v.*

COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., ET AL.,
RESPONDENTS.

## MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR CERTIORARI ON BEHALF OF BOSTON EDISON COMPANY, CAROLINA POWER & LIGHT COMPANY, CENTRAL MAINE POWER COMPANY, COMMONWEALTH EDISON COMPANY, THE CONNECTICUT LIGHT AND POWER COMPANY, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., THE DETROIT EDISON COMPANY, THE HARTFORD ELECTRIC LIGHT COMPANY, ILLINOIS POWER COMPANY, MAINE YANKEE ATOMIC POWER COMPANY, NEW ENGLAND POWER COMPANY, NIAGARA-MOHAWK POWER CORPORATION, NORTHEAST NUCLEAR ENERGY COMPANY, NORTHERN STATES POWER COMPANY, OMAHA PUBLIC POWER DISTRICT, POWER AUTHORITY OF THE STATE OF NEW YORK, PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ROCHESTER GAS & ELECTRIC CORPORATION, SOUTHERN CALIFORNIA EDISON COMPANY, UNION ELECTRIC COMPANY, VERMONT YANKEE NUCLEAR POWER CORPORATION, WESTERN MASSACHUSETTS ELECTRIC COMPANY, WISCONSIN ELECTRIC POWER COMPANY AND YANKEE ATOMIC ELECTRIC COMPANY

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April 18, 1975

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| RUSSELL TRAIN, Administrator of the Environmental Protection Agency, et al.<br>Petitioners,<br>v.<br>COLORADO PUBLIC INTEREST RESEARCH GROUP, INC., et al.<br>Respondents. | No. 74-1270 |

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR CERTIORARI ON BEHALF OF BOSTON EDISON COMPANY, CAROLINA POWER & LIGHT COMPANY, CENTRAL MAINE POWER COMPANY, COMMONWEALTH EDISON COMPANY, THE CONNECTICUT LIGHT AND POWER COMPANY, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., THE DETROIT EDISON COMPANY, THE HARTFORD ELECTRIC LIGHT COMPANY, ILLINOIS POWER COMPANY, MAINE YANKEE ATOMIC POWER COMPANY, NEW ENGLAND POWER COMPANY, NIAGARA-MOHAWK POWER CORPORATION, NORTHEAST NUCLEAR ENERGY COMPANY, NORTHERN STATES POWER COMPANY, OMAHA PUBLIC POWER DISTRICT, POWER AUTHORITY OF THE STATE OF NEW YORK, PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ROCHESTER GAS & ELECTRIC CORPORATION, SOUTHERN CALIFORNIA EDISON COMPANY, UNION ELECTRIC COMPANY, VERMONT YANKEE NUCLEAR POWER CORPORATION, WESTERN MASSACHUSETTS ELECTRIC COMPANY, WISCONSIN ELECTRIC POWER COMPANY AND YANKEE ATOMIC ELECTRIC COMPANY**

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Boston Edison Company, Carolina Power & Light Company, Central Maine Power Company, Commonwealth Edison Company, The Connecticut Light and Power Company, Consolidated Edison Company of New York, Inc., The Detroit Edison Company, The Hartford Electric Light Company, Illinois Power Company,

Maine Yankee Atomic Power Company, New England Power Company, Niagara-Mohawk Power Corporation, Northeast Nuclear Energy Company, Northern States Power Company, Omaha Public Power District, Power Authority of the State of New York, Public Service Company of New Hampshire, Rochester Gas & Electric Corporation, Southern California Edison Company, Union Electric Company, Vermont Yankee Nuclear Power Corporation, Western Massachusetts Electric Company, Wisconsin Electric Power Company and Yankee Atomic Electric Company ("Utilities") hereby respectfully move for leave to file a brief herein as *amici curiae* in support of the petition for certiorari filed by the Solicitor General on behalf of the Environmental Protection Agency and its Administrator ("EPA"). A copy of the brief Utilities would file if this motion is granted is submitted herewith.

The Solicitor General has consented to Utilities' participation herein as *amici curiae*. The consent of Respondent was requested through its counsel but was refused.

Utilities comprise investor-owned and public entities which provide electricity to their customers or construct and operate power plants on behalf of other Companies. In the aggregate, Utilities serve in excess of seventeen million customers, including customers in such large metropolitan areas as Chicago and New York City. Each of Utilities has an interest in one or more nuclear power plants for which construction permits or operating licenses have been issued by the Nuclear Regulatory Commission ("NRC") or for which construction permit applications are pending before the NRC. Utilities have spent billions



of dollars and are obligated to spend further billions of dollars in order to implement their commitment to the generation of electricity by means of nuclear power.[1]

The opinion of the Tenth Circuit of which review is sought erroneously holds that liquid nuclear waste material from facilities such as nuclear power plants are subject to the Federal Water Pollution Control Act Amendments of 1972 ("FWPCA"), 86 Stat. 816, 33 U.S.C. §1251 *et seq.* (Supp. II, 1972), and that EPA has responsibility for regulating such discharges. Thus, the Tenth Circuit's decision adds redundant regulation to comprehensive programs long implemented by the NRC and its predecessor under the Atomic Energy Act of 1954, 68 Stat. 919, 42 U.S.C. §§2011 *et seq.* (1970).

Utilities have a vital interest in this proceeding because the Tenth Circuit's decision would add substantial time and expense to the present exhaustive licensing process for nuclear power plants which is neither required by the FWPCA nor in the public interest. Under the FWPCA, the Tenth Circuit's decision may well lead to the involvement of state agencies, administering standards for nuclear waste materials established by EPA, with the inevitable consequence of overlapping, inconsistent regulation. This consequence in turn will lead to delays in the addition of needed electrical generating capacity and the utilization of scarce and expensive alternative fossil fuels.

[1]The number of customers served by Utilities, the number and capacity of the nuclear facilities to which Utilities are committed, the percentage of Utilities' capacity served by nuclear power plants and the anticipated service dates of units presently uncompleted are set forth in Appendix A to the brief which is submitted herewith.

Petitioner has emphasized the federal interest in a coherent and consistent national system of regulation of nuclear power plants. Utilities, in their brief in support of the petition for certiorari, emphasize the chaotic impact which successive layers of regulation would have upon the design and construction of nuclear power plants.

Utilities believe that their experience with nuclear regulatory matters, and their ability to describe the implications of duplicate regulation of liquid nuclear wastes by NRC and EPA, will provide a useful practical and legal perspective that will assist this Court's consideration of the important issues presented here.

Respectfully submitted,

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April 18, 1975

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**BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR CERTIORARI ON BEHALF OF BOSTON EDISON COMPANY, CAROLINA POWER & LIGHT COMPANY, CENTRAL MAINE POWER COMPANY, COMMONWEALTH EDISON COMPANY, THE CONNECTICUT LIGHT AND POWER COMPANY, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., THE DETROIT EDISON COMPANY, THE HARTFORD ELECTRIC LIGHT COMPANY, ILLINOIS POWER COMPANY, MAINE YANKEE ATOMIC POWER COMPANY, NEW ENGLAND POWER COMPANY, NIAGARA-MOHAWK POWER CORPORATION, NORTHEAST NUCLEAR ENERGY COMPANY, NORTHERN STATES POWER COMPANY, OMAHA PUBLIC POWER DISTRICT, POWER AUTHORITY OF THE STATE OF NEW YORK, PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, ROCHESTER GAS & ELECTRIC CORPORATION, SOUTHERN CALIFORNIA EDISON COMPANY, UNION ELECTRIC COMPANY, VERMONT YANKEE NUCLEAR POWER CORPORATION, WESTERN MASSACHUSETTS ELECTRIC COMPANY, WISCONSIN ELECTRIC POWER COMPANY AND YANKEE ATOMIC ELECTRIC COMPANY**

## INTRODUCTION

Boston Edison Company, Carolina Power & Light Company, Central Maine Power Company, Commonwealth Edison Company, The Connecticut Light and Power Company, Consolidated Edison Company of New York, Inc., The Detroit Edison Company, The Hartford Electric Light Company, Illinois Power Company, Maine

Yankee Atomic Power Company, New England Power Company, Niagara-Mohawk Power Corporation, Northeast Nuclear Energy Company, Northern States Power Company, Omaha Public Power District, Power Authority of the State of New York, Public Service Company of New Hampshire, Rochester Gas & Electric Corporation, Southern California Edison Company, Union Electric Company, Vermont Yankee Nuclear Power Corporation, Western Massachusetts Electric Company, Wisconsin Electric Power Company and Yankee Atomic Electric Company ("Utilities"), as *amici curiae* herein, support the petition for a writ of certiorari which was filed in this matter by the Solicitor General on behalf of the Environmental Protection Agency and its Administrator ("EPA"), with the concurrence of the Nuclear Regulatory Commission ("NRC").[1]

## INTEREST OF UTILITIES

Each of the Utilities holds an interest in one or more nuclear power plants for which construction permits or operating licenses have been issued or applications are pending before the NRC.[2] Utilities are, therefore, heavily involved in providing electricity to their customers by means of nuclear energy and have spent billions of dollars and will be required to spend further billions of dollars

[1]Pursuant to Energy Reorganization Act of 1974, 88 Stat. 1233, 42 U.S.C.A. § 5841 (f) (Supp. Feb., 1975), the NRC succeeded to the regulatory functions of the Atomic Energy Commission. See p. 7, *infra*.

[2]The number of customers served by Utilities, the number and capacity of the nuclear facilities to which Utilities are committed, the percentage of Utilities' capacity served by nuclear power plants and the anticipated service dates of units presently uncompleted are set forth in Appendix A.



pursuant to that commitment.[3] They have a special interest here because the immediate effect of the Tenth Circuit Opinion will be the severe disruption of the process for licensing these plants. Utilities, unlike EPA, have actual experience with the complexity of regulating nuclear wastes and with the burdens inherent in multilayered regulation.

The opinion of the Tenth Circuit may seriously affect the continued operation and scheduled construction of nuclear power plants by imposing redundant and potentially conflicting regulation by the EPA pursuant to the Federal Water Pollution Control Act Amendments of 1972 ("FWPCA"), 86 Stat. 816, 33 U.S.C. §§1251 *et seq.* (Supp. II, 1972). NRC currently regulates all aspects of liquid nuclear waste material discharges based upon evaluations of their effects on the environment and public health and safety. Because of the sophisticated technology involved, such regulation requires in-depth consideration of the design and operation of nuclear power plants. Indeed, since reducing liquid nuclear wastes generally increases nuclear waste discharges in either airborne or solid form, which are also regulated by the NRC, overlapping regulation of such wastes by EPA may conflict with NRC policies in these related areas or prevent the design of nuclear power plants which are acceptable to both agencies. The delay in obtaining permits or permit renewals and other consequences to Utilities' operations which are threatened by the Tenth Circuit Opinion are wholly inconsistent with the obligation

[3]A new two-unit nuclear generating station may cost substantially in excess of one billion dollars.

of Utilities to serve their customers and the declared national policy of conserving fossil fuel resources and developing energy sources not dependent upon foreign governments. The additional layers of regulation which will flow from the Tenth Circuit decision are inconsistent with the expressed intent of Congress and provide no benefits to the public to offset these excessive social and economic costs.

### REGULATIONS AND STATUTES INVOLVED

In addition to the regulations and statutes quoted in the Petition, Section 101(f) of the Federal Water Pollution Control Act, 86 Stat. 816, 33 U.S.C. §1251(f) (Supp. II, 1972), is pertinent to the issues herein. That section provides:

> (f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

### QUESTIONS PRESENTED

1. Whether duplicate regulation of the discharge of liquid nuclear wastes by EPA is required by the FWPCA in light of the NRC's unique and comprehensive responsibility for regulating such discharges.

2. Whether the inevitable disparities in the interpretation of EPA standards with respect to liquid nuclear wastes, which will result if the states are granted the regulatory roles that are generally contemplated by the FWPCA, would be inconsistent with the overall Congressional purpose of maintaining pervasive, unified, federal control over those aspects of the design and operation of nuclear



power plants which could pose a radiological hazard to the health and safety of the public.

### REASONS THE WRIT SHOULD BE GRANTED

1. The opinion of the Tenth Circuit poses an important question involving the accommodation of the statutory charters for two major federal agencies and their respective roles in regulating nuclear power plants. The Tenth Circuit, construing the FWPCA, held that there is concurrent jurisdiction over the discharge of liquid nuclear wastes from nuclear power plants by EPA and NRC. This conclusion, based solely on the court's reading of the definition of "pollutant" contained in the FWPCA, flies in the face of a consistent Congressional policy, expressed in legislative enactments both prior and subsequent to the FWPCA, which is premised on the NRC and its predecessor agency having sole regulatory authority over such discharges and is inconsistent with the legislative history of the FWPCA itself.

The Atomic Energy Act of 1954, 68 Stat. 919, as amended, 42 U.S.C. §§2011 *et seq.* (1970), vests in the NRC the authority and responsibility to administer a pervasive and unified program for the regulation of radioactive discharges to both air and water from production and utilization facilities.[4] The development of that legislation through successive amendments was described in *Northern States Power Co.* v. *Minnesota*, 447 F.2d 1143

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[4]As the opinion of the Tenth Circuit recognized, the liquid nuclear wastes from nuclear power plants are source, by-product or special nuclear materials and nuclear power plants are production and utilization facilities within the meaning of those terms in the Atomic Energy Act of 1954, 68 Stat. 919, as amended, 42 U.S.C. §2014 (e), (z), (aa) (1970).

(8th Cir. 1971), *aff'd*, 405 U.S. 1035 (1972). There, the Eighth Circuit observed that "Federal regulation over the processing and use of source, by-product and special nuclear material and over production and utilization facilities was insured . . . by means of . . . [the] comprehensive licensing system required by the Act." 447 F.2d at 1148. The court went on to consider whether the Atomic Energy Act permitted state regulation of nuclear wastes. In holding that such regulation was preempted by the Atomic Energy Act, the court referred to "[t]he nature of the subject matter regulated and the need for uniform controls in order to effectuate the objectives of Congress. . . ." *Id.* at 1153. The Eighth Circuit perceived that these objectives were contained in specific findings in the Atomic Energy Act "that the processing and utilization of source, by-product and special nuclear material *must be regulated by the United States in the national interest. . . .*" *Id.* (emphasis in original). To this end, Congress enacted "a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency". *Siegel* v. *Atomic Energy Comm'n*, 400 F.2d 778, 783 (D.C. Cir. 1968); *see* also *Union of Concerned Scientists* v. *Atomic Energy Comm'n*, 499 F.2d 1069 (D.C. Cir. 1974). During the enactment of the FWPCA Congress specifically refused to adopt an amendment which would have reversed the *Northern States* decision.[5] This "unique" scope of regulatory authority, bottomed on specific Congressional findings regarding the necessity for exclusive, unified federal control of, *inter alia*, nuclear power plants, has been drastically altered by the decision of the court below.

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[5]See Note 15 of Solicitor General's Brief.



Subsequent to the enactment of the FWPCA in 1972, Congress again considered the regulatory responsibilities of the Atomic Energy Commission. The Energy Reorganization Act of 1974, 88 Stat. 1233, 42 U.S.C.A. §§5801 *et seq.* (Supp. Feb., 1975) abolished the Atomic Energy Commission and substituted in its place two agencies, NRC and the Energy Research and Development Administration. One of the express purposes of the legislation was to "upgrade the regulation of nuclear power" S. Rep. No. 93-980, 93d Cong., 2d Sess. 1 (1974). It was anticipated that the NRC would succeed to "all the licensing and related regulatory functions of the AEC." *Id.* at 57. No mention was made by Congress of any concurrent regulatory jurisdiction over liquid nuclear wastes by EPA, even though the FWPCA had been in force for nearly two years and EPA was in the process of issuing effluent guidelines for power plants which did not deal with source, by-product and special nuclear materials after having declared its understanding that such materials were not covered by the FWPCA. 40 C.F.R. §125.1(y) (1974).

The FWPCA must be viewed against the broad sweep of these other legislative enactments. *Morton* v. *Mancari*, 417 U.S. 535, 547-49 (1974); *United States* v. *American Trucking Ass'ns, Inc.*, 310 U.S. 534, 545 (1940). In this context, the Tenth Circuit's myopic interpretation of the reference to "radioactive materials" in the definition of the term "pollutant" in the FWPCA is clearly erroneous.

The Tenth Circuit failed to give adequate consideration to the interaction of the Atomic Energy Act and the FWPCA or the FWPCA's legislative history, in reliance upon the maxim of statutory construction which purportedly bars such aids when the meaning of the statute is

plain. 507 F.2d at 747. This maxim does not suffice to require the birth of a new regulatory structure without reference to the requirements of other statutes. Moreover, the policy of the FWPCA itself prevents such a simplistic use of its terms. Section 101(f) of the FWPCA establishes the national policy of preventing "needless duplication and unnecessary delays" such as would result from the decision of the Tenth Circuit. 86 Stat. 816, 33 U.S.C. §1251(f) (Supp. II, 1972). In view of this mandate and the NRC's regulatory jurisdiction described above, the meaning of the reference to radioactive materials in the FWPCA cannot be considered in the abstract, and the Tenth Circuit clearly erred in rejecting an analysis of the legislative history. This Court has never been so limited. *United States* v. *Dickerson*, 310 U.S. 554, 561-62 (1940); *Boston Sand & Gravel Co.* v. *United States*, 278 U.S. 41, 48 (1928). As set forth in more detail at pages 17 and 18 of the Solicitor General's brief, the legislative history of the FWPCA compels the conclusions that duplication of the NRC's regulatory role was not contemplated and that Congress intended to avoid such wasteful results.[6]

2. Actions by EPA and the states in developing a regulatory system under the Tenth Circuit's decision may seriously erode the holding in *Northern States Power Co.* v. *Minnesota*, 447 F.2d 1143 (8th Cir. 1971), *aff'd*, 405 U.S. 1035 (1972). Review by this Court is urgently required to prevent this conflct. The *Northern States* de-

[6]*See, e.g.*, 1 Committee Print, A Legislative History of the Water Pollution Control Act Amendments of 1972 Together With A Section-by-Section Index, prepared by the Environmental Policy Division of the Congressional Research Service of the Library of Congress, 93d Cong., 1st Sess., 226, 818 (1973).



cision held that the Atomic Energy Act of 1954 preempted concurrent state regulation of radioactive effluents from nuclear power plants. However, the FWPCA is premised on extensive state participation in the regulatory process and Section 101(b) of the Declaration of Goals and Policy of the FWPCA so states. 86 Stat. 816, 33 U.S.C. §1251(b) (Supp. II, 1972). We do not believe that this policy, or anything else in the FWPCA, empowers the states to set standards of their own for liquid nuclear wastes in complete contradiction to *Northern States, supra.* However, the FWPCA does contain procedures for state implementation of federal standards under which the states may attempt to stake out a role which would leave *Northern States* a mere shell.

To implement the policy of state participation, Congress established a procedural framework calling for state administration in two phases with respect to most pollutants. First, a state in which an industrial facility such as a power plant is located is empowered to grant or deny a certification which is a prerequisite to the issuance of a federal permit for the facility. FWPCA Section 401, 86 Stat. 816, 33 U.S.C. §1341 (Supp. II, 1972). The certification may specify design features and operating restrictions which, in the judgment of the state, will be necessary in order to bring the anticipated discharge into compliance with applicable federal standards established in accordance with the FWPCA. Such certification is prospective and is based on the state's analysis of the proposed design and operation of the power plant. The certification procedure necessarily entails broad discretion on the part of the certifying state. These determinations of compliance with standards and requirements promul-

gated by, *inter alia*, EPA, create the opportunity for 50 different interpretations of the applicable federal standards. This important potential for diversity is further magnified by the fact that the certifying state is authorized to prescribe effluent limitations for the permittee which the state, in its discretion, believes are necessary to achieve the standards thus interpreted. Section 401(d), 86 Stat. 816, 33 U.S.C. §1341 (d) (Supp. II, 1972). Thus, if this certification power applies to standards for the discharge of liquid nuclear wastes, uniform regulation would be precluded.

The second phase of state participation further enhances state discretion by adding the authority to issue and enforce permits with respect to liquid discharges from industrial facilities. Section 402(b), 86 Stat. 816, 33 U.S.C. §1342(b) (Supp. II, 1972). In lieu of their certification powers, delegee states will be authorized to exercise the administrative powers of imposing requirements for applications, and to conduct administrative hearing procedures to determine whether an applicant meets applicable standards promulgated by EPA pursuant to the FWPCA. Twenty-one states, including four states who participated as *amicus curiae* below, have received such authority under Section 402(b). Here again, if the Tenth Circuit's decision results in state permit powers, the *Northern States* holding will be eroded.

If a state's determination of whether applicable standards for liquid nuclear waste discharges will be met during future operation of a nuclear power plant involved no more than a simple calculation, it might plausibly be argued that state participation under the FWPCA in certifying compliance with such standards would not pose



a threat of fragmented, uneven regulation. However, since extremely complex engineering assumptions and the interplay of all aspects of the design and operation of the nuclear reactor and its fuel go into the evaluation of the amount of liquid radioactive discharges which will be released from a proposed nuclear power plant, vast divergence in implementation is inevitable. The magnitude of liquid radioactive discharges ultimately emitted is derived from the fission of uranium atoms in the multitudes of fuel rods in the reactor core and from the activation of materials in the reactor cooling water by neutrons released in the fission process. The extent of the radioactivity which builds in the reactor cooling water is dependent upon the extent of leaks in the fuel rods, the chemistry of the reactor cooling water and the manner of plant operation. Estimates of the level of radioactivity which will occur in the reactor cooling water vary greatly due to these factors. Before any of the materials in the reactor water are released, they must either be removed from the reactor cooling water by clean-up systems or leak, in minute quantities, from valves and equipment within the nuclear power plant. Thus, estimating the quantities of radioactivity which may be found at any point in a nuclear power plant requires complete understanding of the operation of all of the fluid systems in the nuclear power plant and of the equipment comprising those systems. Finally, the collected wastes are treated by numerous types of equipment. Thus, release estimates are further dependent upon performance estimates for the treatment equipment. The NRC has been compelled to engage in extremely complex calculations in order to determine whether proposed nuclear

power plants are likely to comply with its regulations concerning the discharge of liquid nuclear wastes.[7]

Since determinations of the compliance of nuclear power plants with NRC standards are so complex, the opportunities for confusion and variation in state certification of compliance with standards set initially by EPA for such discharges are manifest. Indeed, a state might attempt to ban nuclear power plants entirely, based on its assumptions regarding fuel performance and plant operation on the ground that no combination of available equipment provides, in its view, adequate assurance that the FWPCA standards will be met. Therefore, the legislative goal of unified, comprehensive regulation of nuclear facilities may well be beyond reach, unless the decision of the Tenth Circuit is reversed. At the very least, a long

[7]The complexity of estimating discharges of liquid radioactive wastes is exemplified by the proceeding presently pending before the NRC with respect to Proposed Appendix I to 10 C.F.R. Pt. 50, 36 Fed Reg. 11113 (1971). In that proceeding, the NRC and its predecessor agency have attempted to adopt numerical guides for releases of radioactive materials based upon the "as low as practicable" concept found in 10 C.F.R. §50.34a. The proceeding was commenced on June 9, 1971. Numerous days of hearings have been held and multi-volume draft and final environmental impact statements have been issued, but a decision has not been reached. The NRC Staff, in its concluding statement in the Appendix I proceeding, found necessary both the allowance of margin for exceeding the applicable guide and the issuance of proposed supplemental "Regulatory Guides" including two which relate to the calculation of liquid and gaseous nuclear waste discharges. These guides are each in excess of 150 pages in length and contain assumptions to be made and analytical procedures to be used in determining whether a particular plant will comply with the proposed regulation, as well as related computer listings. Concluding Statement of the Regulatory Staff, No. RM-50-2 (A.E.C., Feb. 20, 1974).



regulatory hiatus will occur while standards for liquid nuclear wastes are developed and the hundreds of applications for the necessary permits are processed, all to the detriment of the goals of providing reliable electric service, conserving alternative fossil fuels and decreasing dependence on foreign fuel supplies.

3. The consequences which flow from the decision of the Tenth Circuit are without any discernable countervailing benefit. The NRC has developed comprehensive regulations requiring evaluation of the effect of the discharge of nuclear wastes on both the environment and the health and safety of the public. Such evaluations are a part of the matrix of NRC regulation of nuclear facilities.[8] These regulations are implemented in detail in operating licenses issued by the NRC for nuclear power plants. In recognition of technological advances, including those pertinent to liquid nuclear waste releases, the NRC has required adherence to increasingly stringent standards. Moreover, since EPA has unquestioned authority to establish standards for acceptable levels of radiation in the total environment, but not to establish standards for the discharge of nuclear wastes from individual nuclear power plants, there is adequate provision for its contribution to the overall regulatory process without its specific regulation of liquid radioactive discharges. Reorganization Plan No. 3 of 1970, 84 Stat. 2086, 42 U.S.C. §4321 (1970), which established EPA, transferred to that agency:

> The functions of the Atomic Energy Commission under the Atomic Energy Act of 1954 as amended, administered through its Division of Radiation Pro-

[8]See 10 C.F.R. Pt. 50 including appendices; see particularly 10 C.F.R. §§50.34–.36a (1974).

tection Standards, to the extent that such functions of the Commission consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material.

The Atomic Energy Commission, in recognition of EPA's authority has agreed to "take appropriate action to assure that AEC-licensed facilities are operated in such a manner that routine radioactive discharges therefrom do not exceed generally applicable environmental standards established by EPA. . . ." AEC-EPA Memorandum of Understanding with Respect to AEC-Licensed Facilities, 38 Fed. Reg. 24936 (Sept. 11, 1973).[9] Accordingly, duplication of the NRC's role by EPA and the states as required by the Tenth Circuit's decision would add nothing to the protection of the environment or the public.

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[9] *See also* Memorandum of Understanding with Respect to AEC Facilities, 38 Fed. Reg. 32965 (Nov. 29, 1973); Office of Management and Budget Memorandum to EPA and AEC, December 7, 1973.



## CONCLUSION

For the foregoing reasons, Utilities submit that the opinion below contravenes the clear Congressional intent to avoid duplicate regulation and that the Court should issue a writ of certiorari to the Tenth Circuit.

Respectfully submitted,

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April 18, 1975

**APPENDIX A**

A-1

| Utility | Customers in Service Territory[1] | Current % of Generating Capacity Which Utilizes Nuclear Energy | % of Generating Capacity Which Will Utilize Nuclear Energy in 1985 |
|---|---|---|---|
| Boston Edison Company..... | 594,000 | 22 | 38 |
| Carolina Power & Light Company..... | 648,000 | 11.8 | 50 |
| Commonwealth Edison Company..... | 2,729,000 | 33 | 43 |

A-2

| Number and Capacity of Nuclear Plants With Operating Licenses[2] | | Number, Capacity and Anticipated Service Date of Nuclear Plants Which Have Construction Permits or Are the Subject of Construction Permit Applications[2] | | |
|---|---|---|---|---|
| Plant | Kilowatts Electrical (in thousands) | Plant | Kilowatts Electrical (in thousands) | Date |
| Pilgrim 1 | 670 | Pilgrim 2 | 1180 | 1982 |
| Yankee Rowe | 175 | | | |
| Connecticut Yankee | 575 | | | |
| H. B. Robinson 2 | 665 | Brunswick 1 | 821 | 1976 |
| Brunswick 2 | 821 | Harris 1 | 900 | 1981 |
| | | Harris 2 | 900 | 1982 |
| | | Harris 3 | 900 | 1983 |
| | | Harris 4 | 900 | 1984 |
| Dresden 1 | 200 | LaSalle 1 | 1078 | 1978 |
| Dresden 2 | 800 | LaSalle 2 | 1078 | 1979 |
| Dresden 3 | 800 | Byron 1 | 1120 | 1980 |
| Quad Cities 1 | 800 | Byron 2 | 1120 | 1981 |
| Quad Cities 2 | 800 | Braidwood 1 | 1120 | 1982 |
| Zion 1 | 1040 | Braidwood 2 | 1120 | 1982 |
| Zion 2 | 1040 | | | |

| Utility | Customers in Service Territory[1] | Current % of Generating Capacity Which Utilizes Nuclear Energy | % of Generating Capacity Which Will Utilize Nuclear Energy in 1985 | Number and Capacity of Nuclear Plants With Operating Licenses[2] | | Number, Capacity and Anticipated Service Date of Nuclear Plants Which Have Construction Permits or Are the Subject of Construction Permit Applications[2] | | |
|---|---|---|---|---|---|---|---|---|
| | | | | Plant | Kilowatts Electrical (in thousands) | Plant | Kilowatts Electrical (in thousands) | Date |
| Consolidated Edison Company of New York, Inc. | 2,800,000 | 10.8 | 19.3[3] | Indian Point 1<br>Indian Point 2 | 257<br>864 | Indian Point 3 | 873 | 1976 |
| The Detroit Edison Company. | 1,651,402 | 0 | 26.5 | — | | Fermi 2<br>Greenwood 2<br>Greenwood 3 | 1150<br>1207<br>1207 | 1980–1981<br>1984<br>1986 |
| Illinois Power Company..... | 471,490 | 0 | 37 | — | | Clinton 1<br>Clinton 2 | 950<br>950 | 1981<br>1983 |
| Niagara-Mohawk Power Corporation..... | 1,278,000 | 9 | 18 | Nine Mile Point 1 | 610 | Nine Mile Point 2 | 1100 | 1982 |
| Northern States Power Company..... | 948,192 | 31.2 | 28.4 | Monticello 1<br>Prairie Island 1<br>Prairie Island 2 | 538<br>520<br>520 | Tyrone 1 | 1150 | 1985 |

| Utility | Customers in Service Territory[1] | Current % of Generating Capacity Which Utilizes Nuclear Energy | % of Generating Capacity Which Will Utilize Nuclear Energy in 1985 |
|---|---|---|---|
| Omaha Public Power District. | 192,766 | 32.2 | 51.5 |
| Power Authority of the State of New York..... | 50[4] | 16 | 31[3] |
| Rochester Gas & Electric Corporation..... | 272,195 | 47 | 54 |
| Southern California Edison Company..... | 2,700,000 | 3 | 12 |
| Union Electric Company..... | 905,000 | 0 | 21 |
| Wisconsin Electric Power Company..... | 731,834 | 27 | 33.3 |



| Number and Capacity of Nuclear Plants With Operating Licenses[2] | | Number, Capacity and Anticipated Service Date of Nuclear Plants Which Have Construction Permits or Are the Subject of Construction Permit Applications[2] | | |
|---|---|---|---|---|
| Plant | Kilowatts Electrical (in thousands) | Plant | Kilowatts Electrical (in thousands) | Date |
| Ft. Calhoun 1 | 455 | Ft. Calhoun 2 | 1150 | 1983 |
| Fitzpatrick | 821 | Greene County | 1300 | 1982–1983 |
| Ginna 1 | 470 | Sterling | 1150 | 1982 |
| San Onofre 1 | 430 | San Onofre 2 | 1100 | 1980 |
| | | San Onofre 3 | 1100 | 1981 |
| — | | Callaway 1 | 1150 | 1981 |
| | | Callaway 2 | 1150 | 1983 |
| Pt. Beach 1 | 485 | Koshkonong 1 | 900 | 1983 |
| Pt. Beach 2 | 485 | Koshkonong 2 | 900 | 1984 |

| Utility | Customers in Service Territory[1] | Current % of Generating Capacity Which Utilizes Nuclear Energy | % of Generating Capacity Which Will Utilize Nuclear Energy in 1985 |
|---|---|---|---|
| The New England area:[5] | | | |
| Central Maine Power Company | 340,000 | 31 | 39 |
| The Connecticut Light and Power Company | 536,000 | 21 | 40 |
| The Hartford Electric Light Company | 282,000 | 21 | 40 |
| Maine Yankee Atomic Power Company | | | |
| New England Power Company | 44[4] | 8.7 | 37 |
| Northeast Nuclear Energy Company | | | |
| Public Service Company of New Hampshire | 250,000 | 9.2 | 57.2 |
| Vermont Yankee Nuclear Power Corporation | | | |
| Western Massachusetts Electric Company | 161,000 | 21 | 40 |
| Yankee Atomic Electric Company | | | |



| Number and Capacity of Nuclear Plants With Operating Licenses[3] | | Number, Capacity and Anticipated Service Date of Nuclear Plants Which Have Construction Permits or Are the Subject of Construction Permit Applications[3] | | |
|---|---|---|---|---|
| Plant | Kilowatts Electrical (in thousands) | Plant | Kilowatts Electrical (in thousands) | Date |
| Yankee Rowe | 175 | Millstone 2 | 830 | 1975 |
| Vermont Yankee | 540 | Millstone 3 | 1,150 | 1979 |
| Connecticut Yankee | 575 | Montague 1 | 1,150 | 1986 |
| Millstone 1 | 660 | Montague 2 | 1,150 | 1988 |
| Maine Yankee | 855 | Pilgrim 2 | 1,180 | 1982 |
| | | Seabrooke 1 | 1,150 | 1980 |
| | | Seabrooke 2 | 1,150 | 1982 |

**Footnotes to Appendix A**

[1]The population served by each utility is a considerably larger number. For example, the population in the service territory of Commonwealth Edison Company is approximately 8,000,000.

[2]Some of the nuclear plants listed are partially owned by other companies.

[3]This number includes Indian Point 3.

[4]These companies are wholesalers of power.

[5]The Northeast Nuclear Energy Company, Maine Yankee Atomic Power Company, Vermont Yankee Nuclear Power Corporation and Yankee Atomic Electric Company are generating companies which construct and operate nuclear power plants for some of the other utilities listed in this group. One or more of the companies in this group has an interest in each of the plants listed.